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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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<b>2005 Assembly Joint Resolution 7</b>	<b>Assembly Substitute Amendment 1</b>
<i>Memo published: June 10, 2005</i> <i>Contact: Robert J. Conlin, Senior Staff Attorney (266-2298)</i>	

### Current Law

Presently, art. IV, s. 13 (2) of the Wisconsin Constitution, provides, in part, that any person who, after being elected to the Legislature, is elected to Congress or is appointed to any civil or military office under the government of the United States, must vacate his or her legislative seat. This restriction, however, does not prohibit a legislator from accepting short periods of active duty as a member of the reserve or from serving in the Armed Forces during an emergency declared by the executive. Generally, under current statutes, a vacancy in the office of legislator is filled via a special election.

### Assembly Joint Resolution 7

AJR 7 is a proposed constitutional amendment on first consideration before the Legislature. AJR 7 would amend the above-described limitation on legislators serving in the military. Under AJR 7, a legislator performing “ordered military duty”<sup>1</sup> would not vacate his or her legislative seat.

Additionally, AJR 7 would amend the Constitution to allow a legislator who will begin performing ordered military duty for more than 30 days to appoint an individual to act temporarily for him or her during the legislator’s absence while on the ordered duty. The appointment is subject to approval by a vote of a majority of the members elected to that house of the Legislature.

Under AJR 7, a temporary acting legislator must be a member of the same political party as the legislator for whom he or she is acting (if the legislator is a member of a political party) and must be

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<sup>1</sup> Under AJR 7, “ordered military duty” means any military duty performed in the Armed Forces of the United States as a result of being called to duty, drafted, or activated, including attendance at any service school conducted by the Armed Forces of the United States as a voluntary member of the National Guard or of any reserve component of the Armed Forces of the United States pursuant to orders issued by competent state or federal authority. Additionally, “Armed Forces of the United States,” for purposes of AJR 7, means the U.S. Army, Navy, Air Force, Marine Corps, Coast Guard, any Reserve component of any of those services, or the National Guard.

otherwise qualified for office under various constitutional provisions (e.g., not a member of Congress, not a felon, a resident of the state and district, etc.). Under AJR 7, a temporary acting legislator begins acting on the date specified in writing by the legislator as the date the legislator will begin performing the ordered military duty, and may continue acting until the legislator is no longer on the ordered military duty, until the end of the term of office of the legislator, or until the legislator revokes the appointment, whichever comes first.

AJR 7 provides that a temporary acting legislator has all of the powers and privileges, and may carry out all of the duties, regularly exercised by the legislator for whom he or she is acting. Additionally, a temporary acting legislator would be entitled to the same amount of compensation payable in the same manner and from the same source as the legislator for whom he or she is acting.

Finally, AJR 7 specifies that a temporary acting legislator is ineligible to be nominated for or elected to the office of legislator of the district in which he or she serves as a temporary acting legislator, but only at the first election for that office held after being so appointed.

### **Assembly Substitute Amendment 1**

Assembly Substitute Amendment 1 makes a number of changes to AJR 7. Those changes are described below.

- The substitute amendment modifies the definition of “ordered military duty” by deleting the modifier “voluntary” before “member of the national guard.”
- The substitute amendment deletes the requirement that the temporary acting legislator be approved by the relevant house of the Legislature.
- The substitute amendment deletes the requirement that the temporary acting legislator be a member of the same political party as the legislator.
- The substitute amendment provides that the temporary acting legislator is eligible to be nominated for or elected to the office of legislator of the district he or she serves as temporary acting legislator if either of the following occur:
  - The legislator is killed in action, is missing in action, or otherwise incapacitated, as determined by law.
  - The legislator files with the Secretary of State a written declination to be a candidate for reelection and does not file to be a candidate for reelection.

### **Legislative History**

Assembly Substitute Amendment 1 was introduced by Representative Gundrum on June 7, 2005 and was recommended for adoption by the Assembly Committee on Campaigns and Elections on June 9, 2005, on a vote of Ayes, 6; Noes, 0. The committee, on the same date, also recommended AJR 7 for adoption, as amended, on a vote of Ayes, 6; Noes, 0.

RJC:jal:wu:rv